

FRN Number: 0001-8253-14

¹ 47 C.F.R. § 17.51(a)

months, white daylights were flashing 24 hours a day and the obstruction lights were on constantly.

5. On October 30, 2001 at 10:15 AM, the Field Office contacted the Federal Aviation Administration (FAA) who advised that a NOTAM had not been issued for this antenna structure site. The FCC form 854 Application on file with the Commission specifies that structure 1061028 is to be painted and exhibit red obstruction lights from sunset to sunrise. The Field Office attempted to again contact Mr. Lawler with Florida Power and Light Company, whose voice mail message indicated that he was out of the office until October 31, 2001. The Field Office then contacted Mr. Tony Padilla with Florida Power and Light Company whose name is provided on the FCC 854 Application on file with the Commission. Padilla stated that he would investigate and provide the status of the lights and lighting specifications for this structure.

6. On November 9, 2001, the Field Office left a voice mail message for both Lawler and Padilla at Florida Power and Light Company requesting the status of the lights on antenna structure 1061028. No response has been received.

7. November 19, 2001, the FAA confirmed that a NOTAM still was not issued for this antenna structure. The FAA also confirmed that the lighting specifications for this structure are Medium Dual; medium white strobe lights during the day and red lights at night.

8. On November 27, 2001, agents from the Field Office performed an on-scene inspection of the antenna structure site. The agents observed the structure at approximately 4:25 PM. During the inspection, the agents observed strobe lighting at the top and strobe lighting in the middle of the structure which were flashing. Red sidelights were observed at the 1/3 and 2/3 levels, and red beacons were installed at the middle of the structure. A red beacon was also installed at the top of the structure. The structure was not painted. Antenna Structure Registration number 1061028 was posted at the site.

9. On November 27, 2001, Tampa Office agents returned to the site after sunset at approximately 6:00 PM. The agents noted that the only red lights illuminated were at the 2/3 level sidelights. A white light was flashing at the top. In the middle of the structure, a white light was flashing only on the south side of the structure. No other white lights were illuminated at this location on the structure. No red beacons were lit in the middle of the structure. The red sidelights at the 1/3 level were not lit.

III. DISCUSSION

10. Section 17.51(a) of the Commission's Rules² requires that all red obstruction lighting shall be exhibited from sunset to sunrise unless otherwise specified. On at least two occasions, the Field Office notified Florida Power and Light Company of complaints of lighting violations on this antenna structure. On November 27, 2001 Field Office agents observed that red obstruction lights on antenna structure 1061028 were not illuminated between sunset and sunrise. The FAA received no notification of tower light

² 47 C.F.R. § 17.51(a)

malfunctions for this tower from Florida Power and Light Company. We find that Florida Power and Light

Company willfully³ violated section 17.51(a) of the Commission's Rules by failing to properly exhibit red obstruction lights between sunset and sunrise.

11. Pursuant to Section 1.80(b)(4) of the Commission's Rules⁴, the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000. Section 503(b)(2)(D) of the Act requires us to take into account "... the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁵ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,⁷ Florida Power and Light Company is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of amount of \$10,000 for violation of Section 17.51(a) of the Commission's Rules.⁸

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Florida Power and Light Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN No. 0001-8253-14 referenced in the letterhead above.

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN No. 0001-8253-14 referenced in the

³ "The term willful, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." *See* Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4)

⁵ 47 U.S.C. § 503 (b)(2)(D)

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ 47 C.F.R. § 17.51(a)

⁹ 47 C.F.R. § 1.80.

letterhead above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Florida Power and Light Company at 9250 West Flagler Street, Miami, FL 33174.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.